

# **Part 2**

# **Articles of the**

# **Constitution**

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## **1 The Constitution**

- 1.1. This article sets out the fundamental provisions of the Constitution. It confirms that the Council will act within the law and the provisions of the Constitution. It defines those documents within the Constitution.
- 1.2. The Council will exercise all its powers and duties in accordance with the law and the Constitution.
- 1.3. The purpose of the Constitution is to:
  - a) enable the Council to provide clear leadership to the community in partnership with citizens, business and other organisations
  - b) support the active involvement of citizens in the process of the Council's decision making
  - c) help Councillors represent their constituents more effectively
  - d) enable decisions to be taken efficiently and effectively
  - e) create a powerful and effective means of holding decision makers to public account
  - f) ensure that no one will review or scrutinise a decision in which they were directly involved
  - g) ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions
  - h) provide a means of improving the delivery of services to the community.
- 1.4. Where the Constitution permits the Council to choose between different courses of action, the Council will always choose that option which it thinks is closest to the purposes stated above.
- 1.5. The Council will monitor and evaluate the operation of the Constitution as set out in Article 14.

## **2 Councillors**

- 2.1. This article sets out the composition of the Council, eligibility to stand for election as a Councillor and the form of election to be used. It also deals with the rights and duties of Councillors.
- 2.2. Composition and eligibility

- a) The Council has 33 Councillors representing 11 wards. Three Councillors will be elected by the voters of each ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- b) Only those who meet the requirements set out in Part V of the Local Government Act 1972 (as amended) are eligible to be a Councillor.  
<https://www.legislation.gov.uk/ukpga/1972/70/part/V>

### 2.3. Elections and terms of office of Councillors

- a) The ordinary election of a third (or as near as may be) of all Councillors will be held on the first Thursday in May every year beginning in 2006. However, in 2009 and every following fourth year there will be no regular election.
- b) A Councillors' term of office will be four years. This will start on the fourth day after being elected and finishing on the fourth day after the date of the regular election four years later.

### 2.4. Key roles of Councillors

- a) All Councillors will:
  - i) collectively be the ultimate policy makers and carry out a number of strategic and corporate management functions. They will also monitor and scrutinise the delivery of services and operation of the Council;
  - ii) represent their communities and bring their views into the Council's decision making process as the advocate of and for their communities;
  - iii) contribute to the good governance of the district and actively encourage community and citizen involvement in decision making;
  - iv) deal with individual casework and act as an advocate for constituents in resolving particular concerns or grievances, and respond to constituents' enquiries and representations fairly and impartially;
  - v) balance different interests identified within the Ward and represent the Ward as a whole;
  - vi) be involved in decision making as well as the governance and management of the Council;
  - vii) be available to represent the Council on other bodies; and

viii) uphold the highest standards of conduct and ethics.

## 2.5. Rights and duties

- a) Councillors will have the right to access documents, information, land and buildings of the Council as are necessary to carry out their functions and in accordance with the law.
- b) Councillors will not make confidential or exempt information public without the consent of the Council. They will not divulge information given in confidence to anyone other than a Councillor or Officer entitled to know it.
- c) For these purposes, “confidential” and “exempt” information are defined in the Access to Information Procedure Rules in Part 4 of the Constitution.
- d) Every Councillor has the right to attend and speak at all meetings of Committees, Sub Committees, Working Groups, Parties and Panels appointed by the Council and Cabinet whether or not the Councillor is a member of the particular body. They will also be able to represent their constituents before the Licensing Sub Committee, Regulatory Sub Committee and Development Management Committee..

## 2.6. Conduct

- a) Councillors will at all times observe the Councillor Code of Conduct and the Officer/Councillor protocol set out in Part 5 of the Constitution.

## 2.7. Allowances

- a) Councillors will be entitled to receive allowances in line with the Members’ Allowances Scheme set out in Part 6 of the Constitution.

## 2.8. Co-opted Persons

- a) Certain Committees, Sub Committees, Working Groups, Parties and Panels may from time to time co-opt non-Councillors on to those bodies. Co-optees will be expected to observe the Councillor Code of Conduct and other relevant rules. They will also be required to observe the rules on confidentiality and will be required to make declarations of interest. They will not have voting rights on such bodies.

### **3 Citizens and the Council**

3.1. Citizens have the right to information and to participate in the democratic process. How this is achieved is explained below and in more detail in the Access to Information Procedure Rules in Part 4 of the Constitution.

3.2. Voting and petitions

- a) Citizens on the electoral roll for the district have the right to vote and sign a petition to request a referendum for an elected mayor form of constitution.

3.3. Information

- a) Citizens have the right to:
  - i) attend meetings of the Council, Cabinet and their Committees, Sub Committees, Working Groups, Parties and Panels (except where confidential or exempt information is likely to be disclosed and that part of the meeting is therefore held in private)
  - ii) see reports, background papers and any record of decisions made by the Council, Cabinet and their Committees, Sub Committees, Working Groups, Parties and Panels (except where confidential or exempt information is likely to be disclosed)
  - iii) inspect the Council's accounts and make their views known to the external auditor.

3.4. Participation

- a) Citizens have the right to submit questions to the Council, Cabinet and its Committees and contribute to investigations by the Council's Overview and Scrutiny function.

3.5. Complaints

- a) Citizens can complain to the:
  - i) Council itself under its Complaints Procedure
  - ii) any relevant Government Body or Commissioner
  - iii) Monitoring Officer about alleged non observance of the Councillor Code of Conduct.

### 3.6. Citizens' responsibility

- a) Citizens must show respect to and not be violent, abusive or threatening to Councillors or Officers. They must not wilfully harm things owned by the Council, Councillors or Officers.

## 4 The Full Council

4.1. The Full Council is the ultimate decision making body of the Council (subject to any legislative restrictions). All Councillors attend Full Council meetings (normally six meetings per year excluding special meetings). At the Annual Council meeting which is normally held in May after the local government elections, Councillors are appointed to specific positions such as the Leader and the Chair of the Council.

### 4.2. Council meetings

- a) There are three types of Full Council meetings:
  - i) Annual Council
  - ii) ordinary meetings
  - iii) special meetings
- b) The meetings will be conducted in accordance with the Council Procedure Rules in Part 4 of the Constitution.

4.3. The responsibilities of the Full Council can be found in Part 3 of the Constitution.

## 5 Chairing the Council

5.1. The Chair of the Council has the following roles and functions, together with those otherwise specified in the Constitution. The Chair will:

- a) uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary
- b) preside over meetings of the Full Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community
- c) ensure that the Full Council meeting is a forum for the debate of matters of concern to the local community and the place at which Councillors are able to hold the Leader and Cabinet to account
- d) promote public involvement in the Council's activities
- e) be the conscience of the Council

- f) attend such civic and ceremonial functions as the Council and they determine appropriate.

5.2. The Vice Chair has the authority to exercise all the powers of the Chair expressed in the Constitution when acting in the absence of the Chair.

## **6 Cabinet**

6.1. The Cabinet carries out all the Council's functions which are not reserved to Full Council or the responsibility of any other part of the Council, whether by law or under the Council's Constitution and takes Key Decisions as defined in Article 12 of this Constitution.

6.2. The terms of reference of the Cabinet can be found in Part 3 of the Constitution.

6.3. Form and composition

- a) The Cabinet will comprise the Leader and at least two (2), but not more than nine (9) Councillors appointed to the Cabinet by the Leader. Neither the Chair nor the Vice Chair of the Council may be appointed to the Cabinet. Cabinet Members cannot be a member of the Scrutiny Committee or its Call In Sub Committee. There will be no co-option to the Cabinet and substitution arrangements will not apply.

6.4. Leader

- a) The Leader will be a Councillor elected to the position at Annual Council. They will be elected for a period equivalent to their remaining term of office. The Leader will hold office until:
  - i) they resign from the office
  - ii) a new Leader of the Council is appointed at the Annual Council meeting if the current Leader reaches the normal date of their retirement/re-election; or
  - iii) they're removed from office by a majority vote of the Full Council.
- b) If the Leader position becomes vacant, the Full Council will elect a successor at its next meeting or at the same meeting if the Leader is removed from office by a vote of Council.

## 6.5. Other Cabinet Members

- a) Other Cabinet members will be appointed by the Leader. They will be identified by the Leader at the meeting at which the Leader is appointed.
- b) They will hold office until:
  - i) they are removed from office by the Leader
  - ii) they resign from the office
  - iii) they are no longer a Councillor.
- c) The Leader can make changes to their Cabinet at any time. Any changes will be reported to the next meeting of Full Council.
- d) The Leader will allocate responsibility for functions to their Cabinet Members. Those Cabinet Members will be known as a 'Portfolio Holders'.
- e) The Leader has discretion to appoint non-portfolio holding Councillors from the Administration as attendees. Additional attendees can speak, but cannot vote, on any business being considered at the meetings of Cabinet.

## 6.6. Deputy Leader

- a) The Leader will appoint a Deputy Leader from among the Cabinet Members. In the absence of the Leader, the Deputy Leader will take on the responsibilities of that position.
- b) Each Portfolio Holder will, with the approval of the Leader, nominate one other Portfolio Holder to deputise for them in their absence or when otherwise unable to perform their duties. In the absence of both the Portfolio Holder and the Portfolio Holder deputising for them, responsibility for a portfolio will pass to the Leader. Where the Leader is unable to perform the duties of others, responsibility for those duties will pass to the Deputy Leader.

## 6.7. Non-Cabinet Councillors

- a) Political groups not forming part of the Administration will form opposition groups. They can nominate Councillors to speak on specific Portfolio Holder functions at meetings of the Cabinet. Nominations will be reported to Full Council. Those spokespersons shall be entitled to nominate deputies from amongst themselves to speak in their absence. At the discretion of the Leader (or Deputy Leader in their absence), the nominated persons may contribute to discussion on items on which they are spokesperson..

- b) Spokespersons will not have the right to vote. All relevant rules on the disclosure of interests will apply to those Councillors.
- c) At the discretion of the Leader (or Deputy Leader in their absence), other non-Cabinet Councillors can contribute to discussion on items at Cabinet meetings that relate specifically to their Wards or constituents. All relevant rules on the disclosure of interests shall apply to those Councillors.

#### 6.8. Proceedings of the Cabinet

- a) Proceedings of the Cabinet will take place in accordance with the Cabinet Procedure Rules in Part 4 of this Constitution.

#### 6.9. Responsibility for Functions

- a) The Cabinet may delegate any of its functions to a Committee, Portfolio Holder (subject to the Portfolio Holder Scheme of Delegation) or to Officers. The Cabinet can create and instruct Policy Development Working Groups to carry out reviews and research into issues that will help it formulate policy.

### **7 Scrutiny**

7.1. Full Council will establish a Scrutiny Committee.

#### 7.2. Composition

- a) Full Council will decide the size and membership of the Committee.

7.3. The terms of reference of the Scrutiny Committee can be found in Part 3 of the Constitution.

#### 7.4. Proceedings of the Scrutiny Committee

- a) The Scrutiny Committee and the Call In Sub Committee will conduct their proceedings in accordance with the Scrutiny Procedure Rules set out in Part 4 of the Constitution.

### **8 Audit and Standards**

8.1. Full Council will establish an Audit and Standards Committee.

#### 8.2. Composition

- a) Full Council will decide the size and membership of the Committee.

8.3. The terms of reference for the Audit and Standards Committee can be found in Part 3 of the Constitution.

## **9 Other Committees, Sub Committees, Working Groups, Parties and Panels**

- 9.1. The Full Council or the Cabinet may establish other Committees, Sub Committees, Working Groups, Parties and Panels that it deems necessary to support them in carrying out their functions.

## **10 Joint arrangements**

- 10.1. The Council, in order to promote the economic, social or environmental wellbeing of the Council's area and its surroundings, may:

- a) enter into arrangements or agreements with any person or body
- b) co-operate with, or facilitate the activities of, any person or body
- c) exercise any functions of that person or body on its or their behalf.

- 10.2. Joint arrangements

- a) The Council can establish joint arrangements with one or more Councils or their Executives to exercise functions in any of the participating Councils, or to provide advice to the Council. This can involve the appointment of a Joint Committee with these other Councils.
- b) Details of any joint arrangements including any delegation to Joint Committees will be found in Part 3 (Responsibility for Functions) of the Constitution.

- 10.3. The Access to Information Procedure Rules in Part 4 of the Constitution apply to any joint arrangements.

- 10.4. If the Joint Committee contains Councillors who are not in the Executive of any participating Council then the access to information rules in Part V A of the Local Government Act 1972 (as amended) will apply.

- 10.5. The Council may delegate functions to another Council or, in certain circumstances, the Executive of another Council.

- 10.6. The decision whether or not to accept such delegation from another Council is reserved to Full Council.

## **11 Officers**

- 11.1. The use of the word "Officers" means all employees and staff engaged by the Council to carry out its functions including those engaged under short term, agency or other non-employed situations.

- 11.2. The Council will engage Officers it considers necessary to carry out its functions.

11.3. The Council must appoint Officers for the following statutory posts. They will normally be designated the following posts as shown, subject to alternative arrangements applying that may be deemed appropriate.

<b>Officer</b>	<b>Statutory Post</b>
Chief Executive	Head of Paid Service
Deputy to the Chief Executive and Director of Finance	Chief Finance Officer (Section 151 Officer)
Director of Governance and Corporate Services	Monitoring Officer

11.4. The Chief Executive will be designated “Chief Officer”. The statutory posts will have the functions described below.

11.5. Functions of the Head of Paid Service

a) Structure

- i) The Head of Paid Service will determine and publicise the overall management structure of the Council.
- ii) The structure will show the management structure, deployment of Officers and responsibility for functions. This is set out at Part 7 of the Constitution.

b) Discharge of functions by the Council

- i) The Head of Paid Service will report to Full Council on the manner in which the Council’s functions are co-ordinated, the number and grade of Officers required for the discharge of functions and the organisation of Officers.
- ii) The Head of Paid Service may appoint or delegate functions to a deputy.

c) Restrictions on functions

- i) The Head of Paid Service cannot be the Monitoring Officer, but can be the Chief Finance Officer if they are a qualified accountant.

11.6. Functions of the Chief Finance Officer (Section 151 Officer)

- a) The duties of the Chief Finance Officer shall be performed by them personally, but can be carried out by a deputy appointed by them to act in circumstances of sickness or absence.

- b) After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Full Council and the Council's external auditor if they consider that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.
  - c) The Chief Finance Officer will have responsibility for the administration of the financial affairs of the Council.
  - d) The Chief Finance Officer will contribute to the corporate management of the Council, in particular through the provision of professional financial advice.
  - e) The Chief Finance Officer will provide advice on the scope of powers and authority to take decisions, maladministration, financial impropriety and probity to all Councillors and will support and advise Councillors and Officers in their respective roles.
  - f) The Chief Finance Officer will provide financial information to the media, members of the public and the community.
  - g) The Chief Finance Officer shall have access, as necessary to meetings and be available to be consulted by Councillors as required.
- 11.7. Duty to provide sufficient resources to the Monitoring Officer and Chief Finance Officer
- a) The Council will provide the Monitoring Officer and Chief Finance Officer with such Officers, accommodation and other resources as are, in their opinion, sufficient to allow their duties to be performed.
- 11.8. Conduct
- a) Officers will comply with the Officers' Code of Conduct and the Officer/Councillor Protocol set out in Part 5 of the Constitution.
- 11.9. Employment
- a) The recruitment, selection and dismissal of Officers will comply with the Officer Employment Rules set out in Part 4 of the Constitution.
- 11.10. Functions of the Monitoring Officer
- a) The duties of the Monitoring Officer will be performed by them personally, but can be carried out by a deputy appointed by them to act in circumstances of sickness or absence.

- b) The Monitoring Officer will maintain an up to date version of the Constitution and will ensure that it is widely available for consultation by Councillors, Officers and the public.
- c) After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Full Council if they consider that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. This report will have the effect of stopping the proposals or decision being implemented until the report has been considered by Full Council.
- d) The Monitoring Officer will contribute to the promotion and maintenance of high standards of conduct by supporting the Audit and Standards Committee.
- e) The Monitoring Officer will conduct investigations into complaints about alleged misconduct by Councillors and make reports or recommendations in respect of them to the Committee.
- f) The Monitoring Officer will ensure that decisions, together with the reasons for those decisions and relevant Officer reports and background papers are made publicly available as soon as possible.
- g) The Monitoring Officer will have access, as necessary, to meetings and be available to be consulted by Councillors as required.
- h) The Monitoring Officer will, as necessary, grant dispensation to members with a Disclosable Pecuniary Interest as defined in Section 33 of The Localism Act 2011.

## **12 Decision Making**

12.1. The Council will issue and keep up to date a record of what part of the Council or which individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 (Responsibility for Functions) of the Constitution.

12.2. Principles of decision-making

- a) In order to give effect to and promote the policies, plans and strategies of the Council contained in the Policy Framework (Article 4) all decisions of the Council will be made in accordance with the following principles:
  - i) Proportionality. The action must be proportionate to the desired outcome
  - ii) Due consultation and the taking of professional advice from Officers

- iii) Respect for human rights
- iv) Due regard to equality and diversity
- v) A presumption in favour of openness
- vi) Clarity of aims and desired outcomes.

### 12.3. Key Decisions

- a) A 'Key Decision' means a Cabinet decision which is likely:
  - i) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates. For the purpose of this article expenditure or savings are deemed to be significant if they exceed £50,000.
  - ii) to be significant in terms of its effects on communities living in an area comprising two or more wards or electoral divisions in the area of the local authority.
- b) A decision taker may only make a key decision in line with the Cabinet Procedure Rules and Access to Information Rules set out in Part 4 of this Constitution.

### 12.4. Decision making by the Full Council

- a) Subject to Article 11.6, Council will follow the Council Procedure Rules set out in Part 4 of the Constitution when considering any matter.

### 12.5. Decision making by the Cabinet

- a) Subject to Article 12.7, Cabinet will follow the Cabinet Procedure Rules set out in Part 4 of the Constitution when considering any matter.

### 12.6. Decision making by Portfolio Holders

- a) Portfolio Holders can make decisions on behalf of Cabinet. These are set out in the Scheme of Delegation which is approved by Cabinet at the first meeting of each Council year.

### 12.7. Decision making by Scrutiny

- a) The Scrutiny Committee and Call In Sub Committee will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of the Constitution when considering any matter.

12.8. Decision making by Committees and Sub-Committees

- a) Subject to Article 12.11 Council Committees and Sub Committees will follow those parts of the Council Procedures Rules set out in Part 4 of the Constitution as apply to them.

12.9. Decision making by Joint Partnership Committee(s)

- a) Decision making by a Joint Partnership Committee will follow the Joint Partnership Committee Procedure Rules set out in Part 4 of the Constitution.

12.10. Decision-making by Council bodies acting as tribunals

- a) The Council, a Councillor, or an Officer can act as a tribunal, or in a quasi-judicial manner. This can be done when determining or considering (other than for the purposes of giving advice) the civil rights and obligations, or the criminal responsibility of any person. They will follow a proper procedure which follows the requirements of natural justice and the right to a fair trial contained in line with Article 6 of the European Convention on Human Rights.

12.11. Urgent Decisions

- a) Where urgent matters need to be dealt with and time does not allow for convening a meeting of Full Council, Cabinet or a Committee, executive power will be vested in the Chief Executive (or in their absence the Deputy to the Chief Executive) in consultation with the Leader of the Council and/or relevant Chair.
- b) No decision will be made, or instructions issued, under this Article which are contrary to an expressed resolution of the Council or an established practice except where it is believed, acting in good faith, that the context requires such decision or instruction.
- c) A report of all decisions taken under this Article will be made to the next meeting of Full Council, Cabinet or the relevant Committee as appropriate.

**13 Finance, contracts and legal matters**

- 13.1. The management of the Council's financial affairs will be conducted in line with the Financial Procedure Rules set out in Part 4 of the Constitution and be subject to independent review by Internal Audit in accordance with the Internal Audit Charter adopted by the Council as set out in Part 5 of the Constitution.

### 13.2. Contracts

- a) Every contract made by the Council will comply with the Standing Orders relating to Contracts set out in Part 4 of the Constitution.

### 13.3. Legal proceedings

- a) The Director of Governance and Corporate Services is authorised to institute, defend, settle or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where they consider that such action is necessary to protect the Council's interests.

### 13.4. Authentication of documents

- a) Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the Director of Governance and Corporate Services or other person they have authorised, unless another person has been given the authority to do so by the Council, or if they are required to do so.

### 13.5. Common Seal of the Council

- a) The Common Seal of the Council will be kept in a safe place in the custody of the Director of Governance and Corporate Services. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Director of Governance and Corporate Services should be sealed.
- b) The affixing of the Common Seal will be attested by the Director of Governance and Corporate Services or some other person authorised by them.
- c) An entry of every sealing of a document will be made, and consecutively numbered, in a book provided for this purpose and shall be signed by the person(s) who have attested the Seal.

## **14 Review and revision of the Constitution**

14.1. The Director of Governance and Corporate Services, as Monitoring Officer, will monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect.

14.2. Protocol for monitoring and review of Constitution by the Monitoring Officer:

- a) The Monitoring Officer will be aware of the strengths and weaknesses of the Constitution adopted by the Council, and to make

recommendations on how it could be amended in order to better achieve the purposes set out in Article 1. In undertaking this task the Monitoring Officer may:

- i) observe meetings of different parts of the Councillor and Officer structure;
  - ii) undertake an audit trail of sample decisions;
  - iii) record and analyse issues raised with them by Councillors, Officers, the public and other relevant stakeholders; and
  - iv) compare practices in this Council with those in other comparable Councils, or national examples of best practice.
- b) Changes to the Constitution
- i) Changes to the policy aspects of the Constitution can only be approved by the Full Council following receipt of a report from Cabinet or a relevant Committee appointed by Council. However, the Director of Governance and Corporate Services has the authority to make editing and consistency changes after discussion with the Chair of the Constitution Panel.

## **15 Suspension, interpretation and publication of the Constitution**

### 15.1. Suspension

- a) The Articles of the Constitution may not be suspended. The Rules specified below may be suspended by the Full Council to the extent permitted within those rules and the law.
- b) A motion to suspend any rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.
- c) The following rules may be suspended in accordance with Article 14:
  - i) Council Procedure Rules (Part 4 of the Constitution) all, except Rules 21.5 and 22.2.

### 15.2. Interpretation

- a) The ruling of the Chair of a Council meeting on the interpretation the Constitution will not be challenged. Any interpretation will have regard to the purposes of the Constitution contained in Article 1.

### 15.3. Publication

- a) The Director of Governance and Corporate Services will make available a copy of the Constitution to each Councillor once they have completed their declaration of acceptance of office when they were first being elected to the Council. This can be in electronic or paper format.
- b) The Director of Governance and Corporate Services will ensure that copies are available for inspection at Council offices, libraries, other appropriate locations and on the Council's website. These can be obtained by the local press and the public. A fee may be charged where appropriate.
- c) The Director of Governance and Corporate Services will ensure that an up to date version of the Summary and Explanation of the Constitution is made widely available within the Harlow area and on the Council's website.